91-175

FILED
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NO._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1990

JOHN BURCHE,
Petitioner
v.
DEGUSSA CARBON BLACK CORP.,AND
ASHLAND CHEMICAL CO.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN BURCHE Petitioner Pro Se
5210 Division St.
Davenport Iowa 52806
(319) 386 4736

QUESTION PRESENTED

Where the rights of petitioner pro-se John Burche, under Seventh and Fourteeth Amendments violated by the Trial Court's findings, affirmed by the United States Court Appeals for the Sixth Circuit, when failed to consider abuses committed toward him?

Such abuses are as follows:

1. Denial of jury trial by the Trial Court;
2. Denial of a complete discovery by the Trial Court;
3. Unfulfilled obligations of respondents toward relocation of petitioner from Iowa to Ohio, connected with his employment;
4. Demotion of petitioner by respondent-Ashland when he requested disciplinary action toward an employee who insulted the petitioner;
5. Termination of employment for petitioner, two days later after he wrote a letter to his employer, respondent-Degussa where he presented unjustices made to him during his employment concerning his relocation and demotion.

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JOHN BURCHE,

Petitioner,

v.

DEGUSSA CARBON BLACK CORP.,

and ASHLAND CHEMICAL CO.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, John Burche, prays that a Writ of Certiorari issue to review the opinion and the judgement of the United States Court of Appeals for the 6th Circuit entered in this proceeding on March 19,1991, was unchanged by denying the Petition for Rehearing En Banc on May 10,1991.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reproduced herein as Appendix "B" to the petition.

The order of the United States Court of Appeals for the Sixth Circuit denying Rehearing En Banc is reproduced herein as Appendix "C" to this petition.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit denying Rehearing En Banc was entered on May 10, 1991. A copy is reproduced herein as Appendix C. This Petition for Writ of Certiorari was filed less than 90 days from the date of aforesaid. The jurisdiction of the Court is invoked under 28 U.S.C.Section 1257(3).

APPLICABLE CONSTITUTIONAL PROVISIONS

Constitution of the United States 7th

Amendment:

"In suits for common law where the value of controversy shall exeed twenty dollars,the right of trial by jury,shall be otherwise reexamined in any Court of the United States,than according to the rules of the common law:..."

Constitution of the United States 14th

Amendment, Section 1:
" Citizenship--- Due process of law--- Equal protection---. All persons born or naturalized in the United States and subject to the jurisdiction therof are citizens of the United States and to the states wherein they reside. States are prohibited from abridging priviledges or immunities of citizens of United States,or depriving any person of due process of law or equal protection of the laws."

STATEMENT OF THE CASE

To the end of January 1988,a recruiter hired by respondent-Ashland called petitioner at work and later on at home asking if petitioner would consider an employment for respondent-Ashland. After a detailed conversation concerning the offered position,petitioner gave an affirmativ answer and agreed to enter into negociations with respondent-Ashland.

Two interviews were taking place,one on February 16, and the second on March 4, 1988.During the second interview were made verbal and written promises to petitioner by respondent-Ashland's representatives concerning a job offer.

Written Promises:

1.That petitioner would be hired as Manager R& D (offer made by J.M Graham) with a salary of $58,600/Year, representing no change in petitioner's income.

2.Thac petitioner would be helped to relocate from Davenport Iowa to Akron Ohio. Such relocation included sales of old house and buying a new house. On depressed areas respondent applies Amended sales Value Policy.

3. That petitioner would benefit from profit sharing and pension plan as part of his employment package.

Verbal Promises:

1. That petitioner would be hired as Director R&D.

2.That respondent buys petitioner's house in Davenport at the cost price,due to a depressed real-estate in that area.

3. That petitioner could work if he wishes as consultant for respondent after his retirement.(Petitioner at that time was 58 years old).

4.That a total of eight professional people would report to petitioner,and adequate help would be given to acquire modern equipment for R&D work.

Petitioner relying on ferm oral and written promises,made by respondent's representatives,accepted the employment offer, and informed them that he would resign from his employer Bandag Inc. after 17 years of employment, just seven years away from retirement. Petitioner did not gain financial advantages through such job

but was impressed about his future professional activity in carbon black and rubber technologies.

Petitioner started to work for respondent-Ashland on March 21,1988, committed to perform a good job, following a research program, working 11-12 hrs/day including most Saturdays.

On September 9,1988,his supervisor J.M.Hugg wrote concerning petitioner's Review of Accomplishments "John Burche is very effective,very conscientious worker who is doing a very good job,it is a pleasure working with him."

However while petitioner trying to perform a good job he noticed serious discrepancies between facts and promises made to him by respondent-Ashland when he was hired such as:

Petitioner got business cards as Director R&D,as it was verbally promised, but found

out,that his real title was Manager R&D. He did not receive,in accordance with respondent's relocation policy,any written offer to buy petitioner's house from Davenport Iowa. Only a verbal offer of $70,000 has been made to petitioner, for his house built in 1981 at a cost of $115,000. Petitioner suggested a compromise to get $95,000 for his house, in order to reduce the loss to about $20,000 renouncing to recover the whole cost price as it was promised by respondent's representatives. Petitioner's offer has been treated with no answer by respondent,declining in this way to use relocation clause "Amended value sales" allowing to pay the cost price for a house of a relocated employee,when the market price was below the cost price as it was in Davenport area for petitioner's house.

For such unfair treatment,petitioner expressed in writing and verbally a total un-

satisfaction about his relocation.

Some of the professional people reporting to petitioner, were used only 30 percent for R&d work, and the rest of their time it has been used for marketing and quality assurance work, per assignments given by the petitioner's supervisor.

In 1988, and before, negociations were in process to sell respondent-Ashland's Carbon Black Division to Degussa A.G., a German corporation. Petitioner was assured during his interviews that selling of Carbon Black Division was out question in spite of various rumors circulating around within business circles.

Respondent-Ashland tolerated acts of insubordination allowing some employees to insult petitioner without taking any disciplinary actions suggested by petitioner. As soon as petitioner expressed in writting his disagreement toward his supervisor J.M.Hugg about such unproductive ways to

solve disciplinary problems, a defamation campaign has been initiated against petitioner starting November 14,1988,by the same supervisor who quoted petitioner on 9/9/88 "A very effective performer".

On November 28,1988, petitioner has been demoted from Manager R&D, to Senior Research Chemist. On November 29,1988,one day after petitioner's demotion, respondent-Ashland's Carbon Black Division has been sold to respondent-Degussa,a subsidiary of Degussa A. G.,but it was maintained the same management, and consequently the retaliation did continue against petitioner by the same people.

During petitioner's employment for respondent-Degussa,as Senior Research Chemist, between 11/29/1988 to 3/22/1989, when petitioner's employment has been terminated,he was like an undesirable person in spite of his efforts to generate creative things,

suggesting through his technical papers, substantial contributions for R&D work, but nobody was interested for such work.

On March 20,1989,petitioner wrote a letter to respondent-Degussa expressing his unsatisfaction about his demotion,and relocation being still in limbo. Two days later on March 22,1989, his employment has been terminated by respondent- Degussa,managed by the same people tranferred from respondent-Ashland through sales of its Carbon Black Division.

Several tentatives to reach a termination settlement with respondent-Degussa did fail because of lack of interest from respondent.

On May 25,1989,a complaint has been filed by petitioner as pro-se,at the U.S.District Court Northern District of Ohio,case no. 5 89CV0981,against respondent-Degussa.

Through the process of discovery,petitioner noticed a total lack of cooperation from previous employer respondent-Ashland toward

discovery process,as well as Court's reluctancy to enforce petitioner's request for such discovery. In several occasions petitioner has been quoted by the Court as incapable to represent pro-se.

On 7/28/1989,a motion has been filed to District Court for an amended complaint to add Ashland Chemical Co. as codefendant. Such motion has been granted on 9/1/1989.

On 8/8/1989,a motion requesting a jury trial has been filed but denied on 8/22/89.

On 10/2/1989, a second motion for jury trial has been filed, but denied again on 10/16/1989. The reason of requesting a jury trial along with the amended complaint has been dictated by the unwillingness of respondents to cooperate for a complete discovery,and by the Court reluctancy to issue an order for compelling defendants in producing requested documents,and answer to interrogatories.

In spite of an incomplete discovery, district court granted on 3/6/1990, a Summary Judgement to respondent-Degussa based on the fact that petitioner's employment has been terminated by respondent-Degussa because petitioner has signed a service agreement with previous employer respondent-Ashland,and his employment was at will employment. Summary Judgment for respondent-Ashland has been denied,but the trial has been limited only to the issue of compensatory damages for petitioner house in Davenport Iowa.

On June 19,1990,a judgment has been entered by the district court in favor of respondent-Ashland pursuant to F.R.C.P. Rule 41(b). Such judgment can be found in Appendix A.

District Court,through its judgment ,neglected the fact that petitioner presented as evidence during trial that retaliation, contracts law, promissory estoppel, and

fraud have application in this case.
During trial the Court again expressed biased remarks toward petitioner that promissory estoppel is too difficult for him to understand it.

The Court reasoned that petitioner as long as did not sell his house in Davenport, during his employment for respondents, no loss has been incurred. The Court thru such judgment neglected the fact that respondent-Ashland offered only 60% of cost price for petitoner's house, and not the entire cost price as promised.

The Court also failed to consider that petitioner resigned from his previous job based only on respondent- Ashland's promises for his relocation, they didn't keep them, and petitioner still has his house but without job and pension benefits at the age of 60 years old. It was not posible to find another job since my employment has been terminated on 3/22/1989.

An appeal has been filed timely, in the Sixth Circuit Court of Appeals which affirmed on 3/19/1991, District Court's judgment pursuant to Rule 9(b)(5) of the Circuit Court of Appeals. The opinion can be found in Appendix B. A petition for rehearing has been filed on time in the same Circuit Court of Appeals, which also has been denied on May 10,1991. The opinion can be found in Appendix C.

The opinion of the Circuit Court of Appeals is nothing more than a rubber stamp of District Court judgment. Such approach is very expedient and doesn't take too much effort.All claims presented by the petitioner for review,and the unjustice committed to him,were not considered at all.It is very regretable that people willing to do a good and creative work in their life are discouraged when their work is quoted in this manner and some courts accept such treatment like in petitioner's case.

REASONS FOR GRANTING THE WRIT

The decision of the Sixth Circuit Court of Appeals conflicts with the decision of other courts, its own decisions, and with petitioner's constitutional rights.

District Court did allow petitioner to amend the complaint without any condition that a timely demand for jury trial be stricken from the amended complaint.

Circumstances must be exceptional before party is required to forego his constitutional right to trial by jury. Local 783 AFL-CIO v.General Electric Co.,471 F.2d 751,38 L.Ed.2d 55.

District Court denied petitioner's demand for jury trial based only on the fact that jury trial has not been requested in the original complaint. Petitioner amended the complaint adding respondent- Ashland which initially refused to provide any documents for discovery,and district court denied petitioner's motion to compel for a complete discovery. In this situation only a trial by jury could have had questioned

the abuse of discretion of district court.

Dispositive criteria in determining the right to jury trial is presence or absence of action at law; if any of claims at issue are legal rather than equitable, than right for jury trial cannot be infringed. U.S.C.A. Const. Amend. 7. Baker v. Amoco Oil Co., 751 F.Supp.1357.

Seeking damages and permanent injunctive relief is legal issue for purpose of 7th Amendment jury trial right. U.S.C.A. Const. Amend.7; 42 U.S.C.A. Section1983; Perez Serrano v. De Leon Velez 868 F.2d 30.

Jury trial must arise out of Seventh Amendment, U.S.C.A. Const.Amend, F.R.C.P. Rule 38(a), and 28 U.S.C.A. Section 1254.
Discharged employee was entitled to a jury trial on claim for relief under 42 U.S.C.A. Section 1981, 748 F.Supp.280.

The remedy for abuse of discretion by court by ruling on question whether evidence is sufficient to jury is by correction on appelate review. Galloway v.U.S., 63 S.Ct. 1077, 319 U.S. 372, 87 L.Ed.1458; Buesher v. Auto Lite Battery Corp. 11 F.R.D.514.

Even in cases of late filing, district court has a broad discretion in ruling on Rule 39(b) motion, and such discretion should be exercised in favor of granting jury trial in the absence of strong compelling reasons to the contrary. Misco Inc. v. U.S. Steel Corp. 784 F.2d 198,205 (6th Cir.1986).

Petitoner was hired by respondent-Ashland under certain written and verbal promises made by its representatives, which reasonably expected and proved by facts to generate action or forbearance of a definite and substantial character on the part of promisee who is the petitioner in this case.

Petitioner based on such promises resigned from his job having left only seven years before retirement. The injustice can be avoided only by enforcement of the promises made by respondent-Ashland.

Equitable estoppel principles are applicable to actions arising under federal law. Estoppel is the process to stop somebody to deny the truth of his statement. Wright v. Farmers' National Corp., 74 F.2d 425.

Estoppel is a means to prevent injustice. Universal Computer Systems Inc.v. Medical Services Association of Pennsylvania 628 F.2d 820,31 U.S.C.A. Section 9307.

Promissory estoppel has been expanded in use beyond the contract laws, to protect against retaliations. McClatchy Newspaper v. Superior Ct., 209 Cal.Rptr.598(1985).

A case, similar to petitioner's case set out by the Ohio Supreme Court where promissory estoppel has application is Mers v. v. Dispatch Printing Co.,483 N.E.2d 150. The doctrine of promissory estoppel is applicable and binding to oral employment at

will agreements when a promise which the employer reasonably expects to induce action or forbearance, if injustice can be avoided only by the enforcement of the promise.

Verbal and written promises made by respondent-Ashland to petitoner during his interviews when an offer for employment has been made, should also be considered as a contract.

A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. Restatement Second of Contract (1981) Section 90; Green v.Institute Unit Mgmt.,748 F.2d 827.

In petitoner's case respondent-Degussa committed a breach in employment contract, even under asumption of arguendo that was at will employment, by terminating the employment of petitioner through retaliation two days after the petitioner wrote a letter on 3/20/1989 showing his unsatisfaction about relocation and unjust demotion. Marshal v.TRW Inc., Rada Pump Division 900 F.2d 1517.

Wrongful discharge of at will employee

thru retaliation is the time of the past. During late 70's and early 80's, at will doctrine of private employment came under intense assault in all sections of society of this country.American Jurisprudence vol. 31 p.518.

Asuming arguendo that petitoner has had an employment at will with respondents. As long as respondent-Ashland made representations altering terms of employment at will such as: "that petitoner could work for respondent-Ashland even after retirement if he wishes" such employment at will becomes an employment under a verbal contract. Such promise has not been changed when petitioner became respondent-Degussa's employee because representatives were the same as for respondent-Ashland and they didn't inform petitioner otherwise.In such case the existence of an employment contract has been established for the period of time till petitioner's retirement. Respondents breached the contract without cause, establishing in such situation a prima facia case.

The status of frauds has also application in this case. Petitioner was assured by respondent-Ashland's representatives,who later on became respondent's-Degussa's representatives,that petitioner's title will be Director of R&D,and through relocation should not loose money through sales of his house.These assurances were not fulfilled.

Respondent has made material representation that was false,that knew was false or made recklessly without knowledge of its truth that he made with intent that it should be acted by petitioner, that petitioner acted on reliance thereon,and thereby suffered injury.Bilkowski v.Merril Lynch Inc.,866 F.2d 821; Ott v.Midland Ross Corp. 600 F.2d 24.

Award is supported when fraud is established by evidence that is clear,direct,precise and convincing. Roman Ceramics Corp., Peoples Nat'l Bank, 714 F.2d 1207,1214.

Fraud occurs where defendant makes false statements of material fact,defendant knows that statement is false,defendant intends that plaintiff will rely on it, plaintiff's reliance is justified,and plaintiff therefore sustains damage.Good v.Zenith Electronics Corp., 751 F.Supp.1320.

Petitioner's promotion has been denied by respondents because he asked his rights

concerning his relocation and wanted to perform his job in an effective way, by asking people reporting to him, in a very polite fashion,to achieve their goals and objectives. Some of them did not like the approach,being used to take it easy,and started all types of complaints or even insulting petitioner. For such continuous efforts from petitioner,he was not encouraged but demoted,and later on his employment terminated,in spite of fact that short time before,his supervisor quoted his work as "very effective".

Promotion decision may be actionable under 42 U.S.C.A. Section1981, 29 U.S.C.A. Section 158 Note 704.

Termination of petitioner employment by respondent-Degussa's representatives, who previously were respondent-Ashland's representatives was an act of conspiracy.

Civil Conspiracy is not actionable in and of itself; its purpose is to serve as a

device through which vicarious liability in underlying wrong may be imposed upon all who are part of it. Riddel v. Ridell Washington Corp.,866 F.2d 1480.

Action for conspiracy may be construed under 14th Amendment-due process clause, and 42 U.S.C.A. Section1983. Slavin v. Curry,583 F.2d 779, 574 F.2d 1256, 102 L. Ed.2d 469.

Cause of action based upon conspiracy may be posited either upon 42 U.S.C.A. Section 1981 or 1983.Mizell v. North Broward Hospital Dist.,427 F.2d 468.

Conspiracy may be basis for claim under 42 U.S.C.A. Section1983. Sowell v. Israel, D.C.Wis.1980, 500 F.Supp.209.

Refusal of trial court to grant subpoena to key employees working for respondents, in order to produce answers to interrogatories requested by petitioner for a complete discovery, constitutes an infringement of constitutional rights of petitioner under 14th Amendment. Supreme Court in such cases remanded for further proceedings as due process clause under 14th Amendment. 94 L.Ed.2d 40.

In various occasions respondents proposed a settlement between $2500to $5000 demonstrate also an evidence of bad faith from respondents' side. In spite of fact that petitoner would incure losses over $ 500,000, was willing to settle and reach a compromise. White v. Western Title Ins. 710 P. 2d 309.

This petition for writ of certiorari prepared by the petitioner pro se,who doesn't have training in law,may have some flaws but has meritorious claims under 42 U.S.C. A. Section 183,should be considered because they have prima facia merit to warrant the expense of a trial. Palmigrano v. Mullen 491 F.2d 978.

Questions which are not mentioned in petition for certiorari to Supreme Court are not properly before Court for consideration: however this rule does not limit the power of Supreme Court to decide important questions not raised by parties. National Ass'n of Broadcasters v.F.C.C.,(1976),554 F.2d 1118,180 U.S.App.D.C.259.

While ordinarily, Supreme Court does not

take note of errors not called to attention of Court Of Appeals nor properly raised in Supreme Court, that rule is not without exception and Court has power to notice plain error though it is not assigned nor specified. Silber v. U.S., App.D.C., 82 S.Ct. 1987, 370 U.S. 717, 8 L.Ed 2d 798.

The Supreme Court may on its own motion notice errors to which no exception has been taken if they seriously would affect the fairness, integrity, or public reputation of judicial preceedings. Johnson v. U.S., 63 S.Ct. 549, 318 U.S. 189, 87 L.Ed. 1164.

Finally the corrections of the Sixth Circuit Court's decision is open to serious questions. The refusal of the Sixth Circuit to consider those facts and findings, and the action of the Court in reviewing the record de novo and in making its own findings cannot be justified.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgement and opinion of the Sixth Circuit.

Respectfully submitted,

John Burche petitioner pro se

John Burche

CERTIFICATE OF SERVICE

I, JOHN BURCHE petitoner pro se hereby certify that pursuant to Rule 33 of the Supreme Court, I served three copies of the foregoing Petition for Writ of Certiorari as follows:

DEGUSSA CARBON BLACK CORP., respondent, by regular U.S. Mail to Mr. EDWARD KATZE at CONSTANGY, BROOKS & SMITH, 2400 Peachtree Center Building, 230 Peachtree St.N.W. Atlanta GA. 30303.

ASHLAND CHEMICAL CO., respondent, by regular U.S.Mail to Mr. THOMAS W.HILL at EMENS, HURD, KEGLER & RITTER, 65 East State St. Suite 1800, Columbus OH.43215.

All parties required to be served have been served.

Dated July 25th 1991

JOHN BURCHE JBurche

5210 Division St. Davenport Iowa 52806

Phone 319 386 4736

A P P E N D I C E S

APPENDIX " A"

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

John Burche,	CASE NO.
Plaintiff,	5:89 CV 981
vs.	JUDGMENT ENTRY
Ashland Chemical Co.,	
Defendant.	

This case came on for trial on June 18, 1990. At the end of the plaintiff's case, the defendant Ashland Chemical Co., moved for dismissal pursuant to the provisions of Rule 41(b) of the Federal Rules of Civil Procedure.

The Court dictated its findings of fact into the record and then announced its conclusions of law and granted the defendant's motion.

WHEREFORE IT IS HEREBY ORDERED, ADJUDGED and DECREED that judgment is granted in

favor of defendant Ashland Chemical Co., and against plaintiff. Each party to bear its own costs.

/s/ David D.Dowd,Jr.

U.s.District Judge

B1

NO. 90-3641

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

John Burche,

Plaintiff-Appellant,

v.

Ashland Chemical Co.,

Degussa Carbon Black Co.,

Defendants-Appellees.

Filed

March 19,1991

Leonard Green

Clerk

ORDER

BEFORE: MARTIN and MILBURN , Circuit judges, and ENGEL Senior Circuit judge.

John Burche,a pro se Iowa resident,appeals the district court's dismissal of his amended civil complaint for breach of contract and wrongful discharge. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of Sixth Circuit. Upon examination of the briefs and the record, this panel unanimously agrees that oral argument is not needed.Fed.R.App.P.34(a).

In March 1988,Burche was hired as a research

manager for Ashland's carbon black division in Akron,Ohio. In November 1988,Ashland sold its carbon black division to defendant Degussa. Burche accepted an offer for employment from Degussa,but he was ultimately terminated from that position on March 22,1989.

Seeking monetary relief, Burche filed suit alleging that Ashland did not honor its oral promise to pay the difference between the market price of his Iowa home and the costs he expended in acquiring the home, and that Degussa wrongfully terminated his employment.

Both defendants filed motions for summary judgment and Burche responded. The district court granted summary judgment for Degussa, finding that Burche was an employee at will and that there was not evidence that Degussa ever ratified or assumed the alleged oral promises made to Burche by Ashland.

However,the district court denied Ashland's motion for summary judgment and set the case for trial to determine whether or not Burche was entitled to compensatory damages under a theory of promissory estoppel.A bench trial was ultimately held,during which the court granted Ashland's motion for an involuntary dismissal under Fed.R.Civ.P. 41(b) after the close of Burche's evidence.
The court also issued findings of fact and conclusions of law pursuant to Rule 52(a). Specifically,the court found that Burche had not made out a claim of promissory estoppel because he was not injured by reliance on Ashland's alleged promise.The court reasoned that Burche had not sold the house in Iowa,and therefore did not incure any loss.The court also found that it was not foreseeable that Ashland would sell its carbon black division to another company and that that company would terminate

Burche.

On appeal,Burche reasserts his claims and additionally argues that the district court improperly limited his discovery; that he was improperly denied a jury trial;and that the trial judge was biased against him. Upon review,we affirm the district court's summary judgment dismissal of Degussa for the reasons stated in the court's opinion dated March 6,1990. We also conclude that the district court properly granted Ashland's motion for an involuntary dismissal under Fed.R.Civ.P. 41(b).The court's findings of facts are not clearly erroneous and they support the court's conclusion that Burche had not made out a claim for promissory estoppel. Anderson v. City of Bessemer City,470U.S. 564,573 (1985); Haskell v. Washington Township, 864 F.2d 1266,1274 (6th Cir.1988). The district court also did not abuse its discretion in limiting Burche's discovery request because the only relocation information pertinent to Burche's case was that information pertaining to newly hired employees. See Chrysler Corp. v.Fedders Corp.,

643 F.2d 1229,1240 (6th Cir.1980), cert. denied,454 U.S.893 (1981). The district court also properly denied Burche's request for a jury trial because he did not make a timely jury demand in his complaint or within ten days after defendants filed their answer. See Fed.R.Civ.P.38(b). Nor did the amended complaint contain any new issues which could have revived Burche's right for a jury trial.See Irvin v. Airco Carbide Inc., 837 F.2d 724,727 (6th Cir. 1987).Finally,the district court was not biased against Burche because he was proceeding pro se. To the contrary,the court patiently explained what rules and procedures Burche needed to follow in order to fully litigate his case.

Accordinly,the district court judgment is hereby affirmed pursuant to Rule 9(b(5),Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT /s/L.Green
Clerk

C1

NO. 90-3641

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN BURCHE,

Plaintiff-Appellant,

v.

ASHLAND CHEMICAL CO. ;

DEGUSSA CARBON BLACK COMPANY

Defendants-Appellees

FILED

May 10,1991

Leonard Green

Clerk

ORDER

BEFORE: MARTIN and MILBURN, Circuit judges; and ENGEL,Senior Circuit judge.

The court having received a petition for rehearing en banc,and the petition having been circulated not only to the panel members but also to all other active judges of this court,and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY THE ORDER OF THE COURT

/s/ Leonard Green, Clerk